



Department of Toxic Substances Control



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RESPONSE TO COMMENTS

RCRA CORRECTIVE ACTION REMEDY SELECTION FOR SOILS, POST-CLOSURE PERMIT FOR AN EXPANDED FORMER LANDFILL (CORRECTIVE ACTION MANAGEMENT UNIT), AND A CEQA NEGATIVE DECLARATION

USS-POSCO INDUSTRIES
900 LOVERIDGE ROAD
PITTSBURG, CA
EPA ID NO. CAD 009 150 194

Background

Public Participation Activities:

In March 2002, a community assessment was conducted by the Department of Toxic Substances Control (DTSC) for the City of Pittsburg. The community assessment consisted of demographic analysis and interviewing public officials and members of community groups. It was found that 48% of the community is white (non-Hispanic), 29% is Hispanic, 20% is African-American, 3% is Asian or an unspecified ethnic group. The community interviews and demographic analysis identified the need for Spanish translation.

DTSC public noticed the proposed RCRA Corrective Action Remedy Selection, draft Post-Closure Permit, and CEQA Initial Study and Negative Declaration on June 10, 2002. The comment period ran from June 10, 2002 through July 24, 2002. A document repository was set up at the Pittsburg Main Library. A bilingual (English and Spanish) fact sheet was mailed to the facility mailing list.

A display advertisement was placed in the Contra Costa Times announcing the opening of the public comment period and the public workshop and hearing, in English on June 10, 2002. A similar public notice ran in Spanish in La Nueva Prensa, a Spanish biweekly newspaper on June 15, 2002. Advertisements were also aired on KSTN Spanish Radio and KUIC radio. The advertisements announcing the public hearing were aired two days

prior to the public hearing, which took place on July 16, 2002. A public workshop and public hearing were held on July 16, 2002 at the Pittsburgh City Hall. No oral comments were received at the hearing. All of the comments received during the 45 day comment period were in writing.

Health Risk Assessments:

USS-POSCO prepared a site specific health risk assessment to determine if dust from excavation during the project would adversely affect off-site residents. This risk assessment concluded that the additional cancer risk to off-site residents was less than one in ten million. DTSC considers additional cancer risk of less than one in a million to be insignificant. Acute, non-cancer health effects were determined by the same assessment to be less than one, meaning that not one person was expected to have significant acute adverse health effects from the project. The assessment was reviewed by a DTSC toxicologist and found to be technically acceptable.

California Environmental Quality Act (CEQA):

DTSC has prepared an Initial Study in accordance with the provisions of the California Environmental Quality Act. The results of the Initial Study conclude that although the project could have a significant effect on the environment, mitigation measures have been added directly to the project that would reduce these effects to less than significant levels. A Mitigated Negative Declaration has been prepared with this finding.

COMMENTS RECEIVED AND RESPONSES TO COMMENTS

No oral comments were received at the public hearing held on July 16, 2002. The following written comments were received during the public comment period, which ran from June 10, 2002 through July 24, 2002. All comments are verbatim as provided by the commentors.

Comment #1 was received from a commentor who prefers to remain anonymous:

The Pittsburg-Bay Point-Antioch area is growing very, very rapidly. My suggestion for the remediation plan is to take the contaminated soils to landfill on a site farther from such a heavily populated area.

As population pressure in the Bay Area continues to force people to move farther into industrial areas that were once "far away" from urban centers, it behooves citizens to re-evaluate the activities of (and even the presence of) hazardous-waste generating facilities in the area.

I am particularly concerned about the substances that are to go into the expanded landfill: the solvents, Arsenic, Chromium, Lead, etc.

While USS-POSCO to might be unlikely to move in the near future, at least, I hope the DTSC might take this opportunity to move the substances to a less densely populated location.

Response to Comment #1:

There are basically three remediation alternatives that were considered in the remediation of soils at USS-POSCO. These are:

Alternative #1: Leave the soils in place and keep them covered with either asphalt, concrete, gravel, or clean soil;

Alternative #2: Place the soils into an already existing on-site landfill;

Alternative #3: Haul the soils to an off-site disposal facility.

Alternative #3, if applied to all the soils to be excavated as suggested by the commentor, would require hauling over 6,000 truckloads of soils through the streets of Pittsburg and over highways for more than a hundred miles to an alternate landfill site. Such a remedy

has significant environmental risks in itself. In so far as there already exists a landfill at the site containing similar materials, there is less environmental impact to the State as a whole to keep those soils on site. Industrial areas and residential areas are in close proximity in many areas throughout California and it is not practical to remove all contamination to remote areas. In this case, we do have the option of consolidating some of the soils into one spot where they can be monitored and security and protective covers can be adequately maintained.

The Unit One landfill already existing at USS-POSCO is a mound of soils, capped with a water-resistant cover, and clean soil planted with grass. The landfill has been in existence since 1978 and holds similar materials as those proposed to be added to it. Groundwater monitoring of the existing landfill has shown no contamination from the existing landfill above it. For these soils which are shown to have no effect on groundwater, Alternative #2 is preferable to alternative #1 since by consolidating all the contaminated soils in one location, they are easier to manage and monitor. The facility will be required to regularly inspect the landfill, test the groundwater, and maintain the cover and fence.

The soils to be placed into the landfill contain metals (arsenic, lead, nickel, chromium), and non-hazardous petroleum products. Non-hazardous petroleum products refer to heavy tars which are stable, are not volatile, and are not carcinogenic. There is one area with low concentrations of solvent. One soil sample in the area called Site L-A, Oil Disposal Area #3 had the following levels of volatile organic carbons (solvents): ethylbenzene (2.5 ppm), toluene (1.3 ppm), xylene (23 ppm). Due to the low volume and low concentration of contaminants in this soil, DTSC does not consider it a significant threat to groundwater.

Regarding alternative #2, USS-POSCO has installed numerous groundwater monitoring wells in the areas from where soils are proposed to be excavated. Groundwater monitoring data has been reviewed by DTSC in order to determine if these soils had impacted the groundwater. Only those soils which can be shown to have had no effect on groundwater based on historical groundwater monitoring data are proposed for placement into the landfill. Since the Unit One Landfill is only authorized to have non-RCRA waste materials placed in it, soils determined to be RCRA wastes will be shipped to an appropriate off-site landfill. Approximately 1,400 cubic yards of soils are expected to be RCRA wastes.

Comment #2: Comment received from, Jim MacDonald, Director for Californians for Renewable Energy (CARE).

On behalf of CARE I provide the following comments on the proposed remedies, draft Post-Closure Permit, and proposed CEQA documents for this project.

Background:

As a resident of Pittsburg I am concerned with the reasonably foreseeable impacts of the proposed remedies for contaminated soils, and proposed draft Post-Closure Permit to allow expansion of an existing Permit to allow expansion of an existing closed landfill at the USS-POSCO Industries site at 900 Loveridge Rd. in Pittsburg. My residence is located approximately one thousand yards due West from the site of the landfill recommended for expansion to include additional hazardous materials. In addition to concerns for the safety of my family, as a trustee of the Pittsburg Unified School District I am also concerned for the health and safety of school children that attend school nearby the proposed project site.

Environmental Justice

On March 16, 2000 CARE and the PUSD filed a civil rights complaint with the US EPA Office of Civil Rights alleging discrimination in the permitting of the Delta Energy Center, which is directly adjacent to the USS-POSCO project site on land being leased to the DEC by Dow Chemical. This complaint is currently subject to a US EPA sponsored Alternative Dispute Resolution process between CARE, PUSD, and the BAAQMD, CEC, CARB, and Cal-EPA. This matter alleges that due to the disparate environmental burden on Pittsburg's community-of-color from pre-existing facilities like USS-POSCO and Dow, the State of California has a duty under Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§2000d to 2000d-7), and Executive Order 12898, which requires a more extensive analysis of disparate impacts, additional mitigation, and monitoring for air and water emissions from proposed projects, like the proposed remedies for contaminated soils, and the proposed draft Post-Closure Permit to allow expansion of an existing Permit to allow expansion of an existing closed landfill. During the pendency of this proceeding CARE requests the California Department of Toxic Substance (DTSC) delay final approval of the projects, until such time as CARE, PUC, and Cal-EPA may develop jointly a agreeable methodology for identifying demographic measures consistent with Title VI guidelines to identify disparately impacted populations (i.e., Environmental Justice protocols). As fugitive dust emissions containing arsenic, lead, nickel, polynuclear aromatic hydrocarbons (PAHs), oil and grease, and polychlorinated biphenyls

(PCBs) from the projects construction activities are reasonably foreseeable, it is highly likely that additional environmental analysis, mitigation measures, and monitoring, will be required, prior to the project going forward.

Response to Comment #2:

DTSC is aware of the need to consider environmental justice as it conducts community assessment and public participation activities. DTSC has recently hired an Environmental Justice Coordinator and is in the process of developing a new Environmental Justice Policy. With respect to DTSC's assessment of the community around USS-POSCO, as noted in the Background Section, DTSC conducted personal community interviews and determined that there was a need to do additional outreach by considering the needs of the Latino community to have some documents translated into Spanish.

DTSC does not agree that its decision will create disproportionate burden. Safeguards and mitigation measures are built into the project which will ensure additional risk to the community is negligible.

DTSC will be interested in the outcome of the alternative dispute resolution of the Title VI Complaint mentioned by the commentor, but cannot disregard its obligation to render a decision with respect to the project before it..

Comment #3: Comment received from Jim MacDonald, Director for Californians for Renewable Energy (CARE).

Requirements of the California Environmental Quality Act (CEQA)

CARE requests that DTSC complete an Environmental Impact Report for this project consistent with the requirements of CEQA. As a local resident I am aware of the applicants facilities' impact on our community. In regards to this particular project/overall activity, DTSC and the applicant cannot avoid doing an EIR. DTSC must discharge its function as a CEQA lead agency, must prepare an environmental documentation--in this case obviously an EIR--and must exercise its own discretion and judgment in reviewing and approving the project as presented.

Response to Comment #3:

With respect to preparation of a Negative Declaration as opposed to an Environmental Impact Report (EIR), it is DTSC's position that it followed the prescribed process for conduct of Initial Studies as contained in the State CEQA Guidelines. Under this process, DTSC was obligated to prepare a Negative Declaration based on the facts presented in the Initial Study that demonstrated potential impacts were either insignificant, less than significant, significant unless mitigated, or having no impacts. Mitigation measures were added to the project to address all potentially significant impacts. (See Response to Comment #7.) As a result, a Mitigated Negative Declaration will be prepared. To conclude an EIR was required is inappropriate, as well as technically and legally not consistent with CEQA or State CEQA Guidelines.

Comment #4: Comment received from Jim MacDonald, Director for Californians for Renewable Energy (CARE).

As no Draft environmental document was available on the DTSC website for public review, your current process for public participation in these proceedings as presently carried out is tainted with gross unfairness, inequity and inherently fraudulent goals. When the process gets near the end, strict time lines are imposed which create additional burdens on CARE, and other members of the public, further hindering if not completely preventing their full and meaningful participation in a process heavily weighed in favor of the applicant, with virtually unlimited resources whose only excuse for piecemealing the required information is to use it as a tactic to avoid or minimize opposition.

Response to Comment #4:

DTSC believes that it does conduct meaningful public participation and involvement in the environmental review process established under CEQA, and has formalized this awareness through established policies and procedures. These policies and procedures were followed in this case as prescribed by CEQA, as evidenced by appropriate noticing of the proposed Negative Declaration and Initial Study for review and comment by the public.

Currently, there is no regulatory requirement to post all draft documents on DTSC's website. It is DTSC's goal to place all these documents on the website, however, due to resource constraints, DTSC has not achieved this goal but intends to reach it. By placing these documents in public libraries in Pittsburg, and notifying the community by public notice in the newspaper and in the fact sheet mailed to the facility mailing list, DTSC has met all legal requirements for access to this environmental information.

Comment #5: Comment received from Jim MacDonald, Director for Californians for Renewable Energy (CARE).

The applicant's ability or willingness to comply with conditions to project approval, mitigation measures and similar obligations depends on the good faith of the applicant to carry them out even if left unsupervised. The applicant has not proposed any measures to address this circumstance, such as monitoring by an independent, qualified non-public organization selected in fair fashion with ample public input. DTSC should require that this potentially devastating enforcement problem be addressed. In a way, this is an area of potentially significant environmental impact under CEQA. The failure to adequately monitor and enforce the performance of project conditions and mitigation measure will surely have a potentially significant, if not overwhelming, impact on the environment. After all, the very fact a mitigation measure was identified is proof a potentially significant impact exists, and if the mitigation measure is abandoned, the adverse impact will occur for sure.

This is a recipe for ecological disaster being carried out without the public's knowledge or approval. Providing an EIR process with an opportunity for meaningful and informed public participation, rather than in the underhanded manner presently being allowed by the current process, would enable the citizens of Pittsburg to have a voice in this matter. It would also allow a full investigation and discussion of such relevant factors as potential risks to public health, biological resources, and water quality, instead of the current process which leaves vital policy decisions in the hands of politically insulated state agencies and the multi-national corporations (i.e., USS-POSCO) seeking to profit from the situation.

Response to Comment #5:

DTSC staff will provide appropriate oversight for various activities approved under this project. These activities include, but are not limited to, movement of contaminated soils, construction of the landfill, and long term monitoring of the landfill to ensure that the work is done properly and all mitigation measures are implemented. DTSC has enforcement authority to take legal action for any violations to the procedures specified in the remedy and the Post Closure Permit. Thus, DTSC sees no necessity for additional oversight from a non-governmental organization.

All mitigation measures have been incorporated by the facility into the project and are fully enforceable by DTSC as part of the project. These measures include procedures to minimize

off-site impacts of dust and noise. The procedures comply with regulations imposed by the Bay Area Air Quality Management District (BAAQMD) and the City of Pittsburg. DTSC will coordinate oversight activities with BAAQMD and the City of Pittsburg to enhance oversight of the project. For a list of the mitigation measures, see Response to Comment #7.

Also, please refer to comment #4 regarding an EIR and the CEQA process that has been conducted for this project.

Comment #6: Comment received from Jim MacDonald, Director for Californians for Renewable Energy (CARE).

In addition to greatly increasing the cost of public participation, the existing process, which, among other things (without limitation), includes piecemealing the public disclosure of information vital to an adequate public review, also makes it extremely difficult if not virtually impossible to intelligently determine if and when to retain additional experts to continue participating in the ongoing review process in a knowing and meaningful manner. As it stands, this is a clear violation of the strong Constitutional rights of public participation, which will undoubtedly continue, and most probably get worse, unless immediate steps are taken to rectify it--assuming, of course, that such steps are feasible.

CARE, the other parties, and the public, wish to participate to carry out this activity, which is protected by the first amendment of the federal constitution. These rights may not be impinged upon by procedural requirements that are not reasonable in light of all pertinent circumstances, not least of which is our lack of resources to properly participate, and your refusal to provide those resources, in whole or in part. Irrespective of the barriers (technical as well as procedural) to meaningful and informed public participation a "good faith effort" has herein been made to raise these issues to compel you to compel the DTSC and the applicant to comply with the procedural due process protections of sections 1085 and 1094.5 of the Code of Civil Procedure, Article I, section 7 of the California Constitution and the Fourteenth Amendment of the United States Constitution, the Supremacy Clause of Article VI of the United States Constitution, and the Public Trust Doctrine in order to assure that (1) this Project's adverse impacts are fully disclosed, evaluated and, where feasible, mitigated, (2) the need (or lack thereof) for this Project is fairly presented and assessed, (3) reasonable alternatives to this Project are given full and fair consideration, and (4) petitioners and the public

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are afforded their constitutionally-protected right to a fair hearing untainted by prejudice, bias and the exclusion of evidence refuting the claimed urgent need for this Project.

Response to Comment #6:

As stated in the response to comment #3, the facts presented in the Initial Study demonstrated that potential impacts were either insignificant, less than significant, significant unless mitigated or having no impacts. See response to comments #7 on the mitigation measures that will be implemented during remedial activities to control dust.

Also, please see responses to comments #4, and #5.

Comment #7: Comment submitted by the City of Pittsburgh:

The City of Pittsburgh is in receipt of your Notice of Public Hearing and Comment Period for the draft Post-Closure Permit and initial study analyzing the proposed expanded toxic landfill identified as Waste Management Unit 1 for USS-POSCO properties east of Harbor Street in Pittsburgh. The City acknowledges the Department of Toxic Substances Control (DTSC) as the lead agency with respect to the California Environmental Quality Act on this project and has the following comments on the initial study submitted to the City for its review.

Several of the mitigation measures proposed during remedial activity lack quantitative information necessary for the public to assess if implementation of the proposed measures will alleviate potential impacts. The City requests that quantitative measures be added, where appropriate, to ensure mitigation is meaningful and monitoring is feasible.

Example 1: Mitigation measure states "Limit area subject to excavation, grading and other construction activity at any one time". Recommendation: State maximum amount of area that should be disturbed at any one time.

Example 2: Mitigation measure states, "Post signs to warn the public and non-construction employees of hazardous activities at the project site". Recommendation: State signs should be posted at all entry points to site and/or specify distance from site signs should be posted to keep unauthorized personnel out of hazardous zone.

Example 3: Mitigation measure states "Limit hours of operation of heavy-duty equipment and/or the amount of equipment in use." Recommendation: Quantify limitations necessary to alleviate potential impacts

These examples are not meant to be inclusive. Please review all proposed mitigation measures and add quantitative measures, where appropriate.

After reviewing the City Municipal Code, it is our finding that the expansion of a toxic waste site is regulated by the City and subject to the granting of a conditional use permit by the City Planning Commission. As a Responsible Agency, the City of Pittsburgh will consider

the mitigated negative prepared by DTSC before taking action on the use permit application. In order to assist the City in its analysis of this project, please send me a copy of the final negative declaration and mitigation monitoring plan prepared by or on behalf of DTSC for the proposed Post-Closure Permit.

It is anticipated that the Planning Commission will hold its public hearing and take action on a use permit application within 45 days after a use permit application is submitted and deemed complete.

I will forward a copy of this letter and relevant sections of the Pittsburgh Municipal Code that regulate the proposed expansion to Mr. Mauritz Kallerud of USS POSCO. I will also provide him with copies of the appropriate application and submittal requirements to expedite the City's review process.

Response to Comment #7:

The following changes to requirements for dust control, sign posting, and hours of operation and equipment use have been made to address the concerns of the City of Pittsburgh. These changes have been incorporated in the POSCO's Permit Application which by reference is part of the remedy and permit. DTSC, through oversight responsibility, will enforce all requirements as specified in the approved remedy and permit.

The Permit Application now reads (added language is underlined):

Mitigation Measures During Remedial Activity: USS-POSCO shall perform the following mitigation measures:

- C Regularly water all active construction areas and at access and haul roads at least twice daily;
- C Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard in all trucks, or employ other equivalent means (such as watering the top layer of materials exposed to short on-site haul distances) as may be approved by the BAAQMD;
- C Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at the project site;
- C Sweep daily (with water sweepers) all paved access roads, paved parking areas and paved staging areas at the project site;
- C Sweep southbound lanes of Loveridge Road (from Site L-A entrance/exit point on Loveridge Road to the Pittsburgh-Antioch Highway) at the end of each day (with water sweepers) during the off-haul of remediation soils;

- C Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously disturbed areas inactive for ten days or more), or employ other equivalent means (such as watering disturbed areas to maintain adequate moisture content) as may be approved by the BAAQMD;
- C Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.);
- C Limit traffic speeds on unpaved roads to 15 miles per hour;
- C Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- C Replant vegetation (hydroseed) in disturbed areas as quickly as possible (i.e., at least twice during Site L-A remediation activity and at the completion of the closure activity at the Unit I CAMU);
- C Install wheel washers for all trucks, or manually wash off the tires or tracks of all trucks and equipment traveling between Site L-A and the Unit I CAMU on paved access roads;
- C Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour or operate in a manner such that visible dust emissions from all excavation and grading activity does not exceed 0.5 on the Ringelmann chart, for a period or periods aggregating more than 3 minutes in any hour;
- C Limit the area subject to excavation, grading, and other construction activity to two SWMUs or 10 acres (which ever is less) and the Unit I CAMU at any one time;
- C Enforce a speed limit of not more than 15 miles per hour on unpaved roads and 30 miles per hour on paved roads within the UPI facility;
- C Have on-site at all times, a site safety officer who is responsible for implementing the specific project construction SSHSP (signed by a Certified Industrial Hygienist and reviewed by UPI and/or its consultants for completeness) and implementing dust mitigation measures;
- C Install appropriate air monitoring equipment as may be required by the BAAQMD;
- C Limit personnel entrances into excavations;
- C Limit the number of construction areas as well as limit access to those areas to approved personnel with adequate protective equipment; and
- C Post signs at all project entry points or within 200 feet of project activities to warn the public and non-construction employees of hazardous activities at the project sites.

Mitigation Measures for Heavy Equipment: USS-POSCO shall, to the extent possible, implement the following mitigation measures to minimize the impacts of heavy equipment use:

- C Use alternative fueled construction equipment;
- C Minimize idling time, for example, 5-minute maximum;
- C Maintain properly tuned equipment; and

- C Limit the hours of operation of heavy-duty equipment as may be restricted by the City of Pittsburgh and/or the amount of equipment in use as may be restricted by the BAAQMD.